

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 287

Docket No. MC2017-77

Competitive Product Prices  
Priority Mail Contract 287 (MC2017-77)  
Negotiated Service Agreement

Docket No. CP2017-104

ORDER ADDING PRIORITY MAIL CONTRACT 287  
TO THE COMPETITIVE PRODUCT LIST

(Issued January 30, 2017)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 287 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 287 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 13, 2017 (Request).

## II. BACKGROUND

On January 13, 2017, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 287 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.<sup>2</sup>

The contract is intended to take effect two business days following the date on which the Commission issues all necessary regulatory approval. Request, Attachment B at 3. It is set to expire 12 months from the effective date, but is set to automatically renew for two successive 12-month periods. *Id.*

On January 17, 2017, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

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<sup>2</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 1, 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>3</sup> See Docket No. MC2017-77, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, January 17, 2017.

On January 25, 2017, Chairman's Information Request No. 1 was issued.<sup>4</sup> CHIR No. 1 sought additional information regarding the financial model filed under seal. The Postal Service filed its Responses to CHIR No. 1 on January 27, 2017.<sup>5</sup>

### III. COMMENTS

The Public Representative filed comments on January 25, 2017.<sup>6</sup> No other interested person filed comments. The Public Representative concludes that Priority Mail Contract 287 should be classified as a competitive product and added to the competitive product list. PR Comments at 2. He states that while the contract is unusual in that it contemplates same-day delivery and its costing is unusual, it also contains an adjustment clause to permit price adjustments "arising out of (A) superior or inferior performance, (B) substantial changes to delivery density, or (C) any other relevant characteristic of the Contract Packages." *Id.* at 3.

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, the Responses to CHIR No. 1, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 287 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly,

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<sup>4</sup> Chairman's Information Request No. 1, January 25, 2017 (CHIR No. 1).

<sup>5</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1, Filed Under Seal, January 27, 2017 (Responses to CHIR No. 1).

<sup>6</sup> Public Representative Comments on Postal Service Request to Add Priority Mail Contract 287 to Competitive Product List, January 25, 2017 (PR Comments).

decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that a mix of couriers and express delivery service companies compete within the emerging market for same-day delivery, and that the Postal Service's same-day delivery offerings should not have a significant impact on the time-sensitive deliveries provided by couriers and similar small business delivery companies. *Id.* at 3-4.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Contract 287 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 287 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds Priority Mail Contract 287 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). The contract contains a price adjustment provision that adjusts contract rates during subsequent contract years. Request, Attachment B at 3. The contract's price adjustments should not impact the likelihood that the rates will cover attributable costs during the subsequent contract years because the cost coverage is sufficiently high in the first year. For these reasons, the Commission also finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Furthermore, to ensure that the Postal Service collects data sufficient for the Commission to complete this determination, the Commission directs the Postal Service to report contract-specific volumes, costs, and workhours on a quarterly basis for the duration of this contract. This reporting will allow the Commission to confirm that the Postal Service's financial models contain reasonable cost assumptions and accurately account for all costs associated with Priority Mail Contract 287. Each report shall be filed in these dockets within 30 days of the completion of each quarter of the fiscal year, with the first report due July 31, 2017. If after four quarterly reports, the reports show this contract has not covered its costs, the Postal Service shall negotiate an amendment raising prices to cover costs or terminate this contract in accordance with Article IV of the contract. See Request, Attachment B at 3. The Postal Service shall file notice in these dockets of the requested amendment or termination within 30 days of filing the fourth report with the Commission.

*Other considerations.* By its terms, the contract becomes effective two business days after the date that the Commission issues all necessary regulatory approval. Request, Attachment B at 3. The contract is scheduled to expire 12 months from its effective date, but is set to automatically renew for two successive 12-month periods unless, among other things, either party terminates the contract with 60 days' written notice to the other party or it is renewed by mutual agreement.<sup>7</sup>

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<sup>7</sup> *Id.* at 3-4. Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the contract expiring.<sup>8</sup> During the extension periods, prices will be adjusted as described in the contract. Request, Attachment B at 3-4. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Contract 287 as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Priority Mail Contract 287 (MC2017-77 and CP2017-104) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

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<sup>8</sup> *Id.* Notwithstanding the wording of the contract, it is the Commission's understanding that the Postal Service intends to provide notice of an extension at least one week prior to a contract's expiration. Advance notice of at least one week is consistent with the standard set forth in Order No. 1773. Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2; Docket No. CP2009-38, Order No. 1523, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2.

2. The Postal Service shall report contract-specific volumes, costs, and workhours on a quarterly basis for the duration of this contract. Each report shall be filed in these dockets within 30 days of the completion of each quarter of the fiscal year, with the first report due July 31, 2017. If after four quarterly reports, the reports show this contract has not covered its costs, the Postal Service shall negotiate an amendment raising prices to cover costs or terminate this contract in accordance with Article IV of the contract. The Postal Service shall file notice in these dockets of the requested amendment or termination within 30 days of filing the fourth report with the Commission.
3. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date, which includes the instant contract's automatic renewal periods.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble  
Secretary



## CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2017-77 and CP2017-104. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### **Appendix B to Subpart A of Part 3020—Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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Priority Mail Contract 287

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## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products** **2000 Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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#### Priority Mail Contract 287

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#### **2500 Negotiated Service Agreements**

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#### **2505 Domestic**

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#### **2505.5 Priority Mail Contracts**

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- Priority Mail Contract 287

#### Baseline Reference

Docket Nos. MC2017-77 and CP2017-104

PRC Order No. 3764, January 30, 2017

#### Included Agreements

CP2017-104, expires January 31, 2020

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